IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.428 OF 2006

Smt.Antonette Ronel Augustine Almeida ....Appellant
V/s.
The Pune Contonment Board & Anr. ....Respondents

Mr.S.G. Deshmukh for the Appellant.

Mr.V.G. Mujumdar for Respondent No.1.

Mr.M.V. Limaye for Respondent No.2.

CORAM : S.J. VAZIFDAR, J.
DATED : 3RD SEPTEMBER, 2007.

P.C. :

1. No question of law arises in this Second Appeal. For the purpose of this order, I have proceeded on the basis that the suit cannot be held to be not maintainable under Section 273(4) of the Cantonments Act, 1924 (for short "the said Act"). In other words, I have proceeded on the basis that the suit is maintainable.

2. The only question that arise is whether the construction which is now sought to be demolished by Respondent No.1 - Board by issuance of a notice under Section 184 of the said Act was in fact demolished earlier in 1976 or not. If it was in fact demolished

in 1976, then admittedly the Plaintiff's suit is liable to be dismissed.If it was sought to be demolished for the first time in 1980 by issuance of the impugned notice, then the construction which was admittedly there prior to 1976 could not be proceeded agaomst in view of the twelve months bar under Section 185 of the said Act.

3. The trial Court held in the Appellant/Plaintiff's favour. The Appeal Court however revised the finding in this regard. I am unable to state that the Appeal Court ignored the evidence or that the analysis of evidence by the learned Judge was perverse or unsustainable.

4. For instance, the learned Judge observed the fact that the Respondent - Board's officer who had carried out the demolition in 1976, had submitted a report to this effect to the authorities. It is the same officer, who was examined on behalf of Respondent No.1 - Board. Considering the nature of the evidence, the learned Judge has found it fit to accept his evidence. No fault can be found with this approach.

5. It is also important to note the learned Judge found that the Appellant had stated that she had

paid the electricity bills during the period 1976-1981 in respect of the said premises. This no doubt would have been an important factor for establishing whether or not the structure had been demolished in 1976. If it had not been demolished, naturally the electricity bills would have been issued. However, as noted by the learned Judge, the Appellant had not produced a single bill. Mr.Deshkukh, the learned counsel appearing on behalf of the Appellant was unable to give any reasons for the same. Nor was he able to furnish any other evidence which established that the Appellant had actually been in occupation and possession of the structure during the period 1976-1981.

6. The Appellant had led evidence of certain third parties/neighbours. She also examined herself and produced other evidence as well.

7. The learned Judge considered the evidence and weighed the same.

8. In the circumstances, the Second Appeal is dismissed.

. This order is stayed for a period of eight

weeks from today to enable the Appellant to challenge the same.